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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/738,431	12/14/2000	Richard S. Ginn	258/2999	1012

34313 7590 01/20/2004

ORRICK, HERRINGTON & SUTCLIFFE, LLP  
4 PARK PLAZA  
SUITE 1600  
IRVINE, CA 92614-2558

EXAMINER

NERBUN, PETER P

ART UNIT PAPER NUMBER

3765

DATE MAILED: 01/20/2004

23

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/738,431

Applicant(s)

GINN ET AL.

Examiner

Peter P Nerbun

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 December 2003.
- 2a) ☐ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 39, 40, 44-47, 52-55, 60-68, 80 and 82 is/are pending in the application.
- 4a) Of the above claim(s) 80 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 39, 40, 44-47, 52-55, 60-68 and 82 is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 9.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

This application is in condition for allowance except for the presence of claim 80 to an invention non-elected with traverse in Paper Nos. 13, 18, and 20. In paper no. 13, applicant elected the species illustrated in Figure 3. In that election applicant stated that he believed that claim 80 read upon the elected species. In paper no. 16 the examiner disagreed with applicant's assertion that claim 80 read upon the elected species illustrated in Figure 3. The examiner noted that claim 80 recites a distal end of an elongate member as having a connector thereon and a plug member releasably secured to the distal end of the elongate member by the connector. The examiner also stated that the description on page 13, lines 16-22 and page 14, lines 1-22, and page 15, lines 1-2 of applicant's specification provides no disclosure to support the presence of these features in the Fig. 3 embodiment. In paper no. 18, on page 10, lines 17-18 and page 11, lines 1-2, applicant traversed the examiner's holding that claim 80 does not read upon the elected species illustrated in Figure 3. In paper no. 20 the examiner continued to disagree with applicant's assertion that claim 80 read upon the elected species. In that paper the examiner noted that independent claim 80, lines 5-6 recites "a plug member releasably secured to the distal end of the elongate member by the connector". The examiner further noted that on page 15, lines 8-9 of the specification applicant describes the Figure 4 embodiment by stating that: "*Unlike the previous embodiment, however, the plug member 220 is releasable from the shaft 212*" (emphasis added). The "previous embodiment" that applicant refers to is the embodiment illustrated in Figure 3 which applicant elected in paper no. 13. Therefore the plug member 220 is disclosed as not being releasable from the shaft in the Figure 3

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embodiment which means that claim 80 does not read upon the elected embodiment as disclosed. In paper no. 22 applicant presents an amended claim 80 which is not directed to the elected species illustrated in Figure 3 for the reasons given hereinabove. Thus applicant has traversed the election requirement by continuing to disagree with the examiner's contention that claim 80 does not read upon the elected species illustrated in Figure 3.

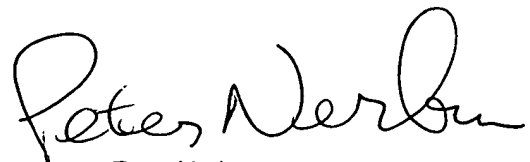
A copy of the PTO-1449 (paper no. 9) is provided to replace the previously sent copy which was unsigned.

Applicant is given ONE MONTH or THIRTY DAYS from the date of this letter, whichever is longer, to cancel the noted claim or take other appropriate action (37 CFR 1.144). Failure to take action during this period will be treated as authorization to cancel the noted claim by Examiner's Amendment and pass the case to issue. Extensions of time under 37 CFR 1.136(a) will not be permitted since this application will be passed to issue.

The prosecution of this case is closed except for consideration of the above matter.

Peter Nerbun

January 14, 2004



Peter Nerbun  
Primary Examiner